

Remarks

Claims 1-2, 4-16, and 18-40 are pending upon entry of this amendment. Claims 3 and 17 have been cancelled and their subject matter incorporated into claim 1. New claims 26-40 find support in the specification as originally filed and differ from claim 1 by the presence of alachlor and the amount of organic solvents. Specific support for the aromatic content limitations is found in original claim 9. No new matter is added by this amendment.

The Examiner rejected claims 1-25 under 35 USC 103 as being unpatentable over the combined teachings of Penner (US6235682) and Feucht (US6365550). The Examiner notes that Penner teaches compositions comprising a herbicide such as an acetanilide or acetamide herbicide and an oil-based adjuvant such as a free fatty acid. The compositions contain an organosilicon containing adjuvant for the purpose of reducing the foliar retention of the composition so that it does not adhere to the desirable crop plants but controls the weeds beneath. Feucht teaches herbicidal compositions comprising flufenacet in combination with glyphosate or glufosinate in combination with conventional adjuvants including organic solvents and oil-based adjuvants such as xylene, toluene, or alkynaphthalenes, aliphatic hydrocarbons such as cyclohexane or paraffins, mineral oil fractions, etc. According to the Examiner, it would have been *prima facie* obvious to use the customary oil based adjuvants of Feucht with the active agents and fatty acid components of Penner to obtain the beneficial characteristics of the Penner compositions. Applicants respectfully traverse.

The Penner invention requires silicon-based materials as repellent adjuvants, a requirement not found in the compositions of the present invention. Additionally, the Penner invention centers on the repellent properties of a composition so that retention on the foliage is reduced. The present invention, on the other hand, is used primarily for soil-applied treatments. Another difference between the Penner compositions and the claimed invention relates to the use of specific lipophilic additives used in the present invention, i.e., lipophilic additive having at least one member selected from C13 – C20 fatty acids, C13 – C20 fatty alcohols and hydrocarbon fluids. The Penner reference, while noting that free fatty acids may be used in the composition, does not specify the type of fatty acids, as is specifically done in the present claims, nor does it demonstrate that the lipophilic additive is necessary to impart a synergistic herbicidal activity, as is also claimed in the present invention. (Note the data showing synergistic activity found at page 21 of the specification) For these reasons, Applicants respectfully submit that the Penner reference does not disclose a similar composition as the claimed invention.

The Feucht reference likewise fails to render the present claims obvious. The reference discloses the synergistic activity between two very specific herbicides while the present application claims synergy imparted by a very specific type of lipophilic additive. While the reference discloses

the use of solvents embraced by the present claims, it is not instructive of the amounts of these solvents necessary to enhance the activity of the herbicidal activity. Just the opposite is true, in fact, since the Feucht reference is directed to the synergy imparted by the herbicide combination itself, without regard to the solvents used.

Taken together, the Penner reference and the Feucht reference do not render the present claims obvious. There is absolutely no motivation to combine the two references other than by the hindsight suggestion provided by the present claims. Even if there was a suggestion to combine, neither reference provides appropriate guidance to make the synergistically active compositions of the present invention. Neither reference identifies the specific selection of lipophilic additives as potential synergists.

In light of the amendments and remarks provided herein, Applicants respectfully request allowance of all of the pending claims.

Respectfully submitted,

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